

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DAVID P. DIEHL,	:	CIVIL ACTION NO. 1:07-CV-1213
	:	
Plaintiff	:	(Judge Conner)
	:	
v.	:	
	:	
ELECTRONIC DATA SYSTEMS CORPORATION and LIFE INSURANCE COMPANY OF NORTH AMERICA,	:	
	:	
Defendant	:	

ORDER

AND NOW, this 15th day of October, 2007, upon consideration of plaintiff's motion to strike (Doc. 21) the motion to dismiss filed by defendant Electronic Data Systems Corporation (Doc. 18), and it appearing that the motion to dismiss (Doc. 18) is not accompanied by "a form of order which, if approved by the court, would grant the relief sought in the motion," see L.R. 7.1, but that the motion to dismiss does indicate that the concurrence of plaintiff's counsel was sought (see Doc. 18 at 2), and it further appearing that defendant's answer was filed twenty-three minutes prior to its Rule 12(b)(6) motion to dismiss (see Docs. 17, 18), and that "technically a Rule 12(b)(6) motion cannot be filed after an answer has been submitted," see Westcott v. City of Omaha, 901 F.2d 1486, 1488 (8th Cir. 1990); see also FED. R. CIV. P. 12(b), but that Rules 12(c) and 12(h)(2) permit a party to assert a defense of failure to state a claim "by motion for judgment on the pleadings" at any time after the pleadings have closed, and that a motion for judgment on the pleadings pursuant to Rule 12(c)

and a motion to dismiss pursuant to Rule 12(b)(6) are governed by the same standard, see Haddock v. Christos, 866 F. Supp. 170, 172-73 (M.D. Pa. 1994), it is hereby ORDERED that:

1. The motion to strike (Doc. 21) is GRANTED in part as follows:
 - a. Defendant Electronic Data Systems Corporation shall file a proposed order to accompany its motion (Doc. 18) on or before November 2, 2007. See L.R. 7.1.
 - b. Defendant Electronic Data Systems Corporation's motion to dismiss (Doc. 18) shall be treated as a motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c).
 - c. The motion to strike is otherwise DENIED.
2. Plaintiff shall file a brief in opposition to the motion (Doc. 18) on or before November 2, 2007. Failure to do so shall result in the motion being deemed unopposed. See L.R. 7.6.
3. Defendant Electronic Data Systems Corporation shall be permitted to file a brief in reply on or before November 19, 2007.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge